



California Fair Political Practices Commission

November 26, 1986

Lucas J. Bonagura, M.D., President
Tri-City Hospital District
Board of Directors
c/o Tri-City Medical Center
4002 Vista Way
Oceanside, CA 92056-4593

Re: Your Request for Advice on
Behalf of All Five Board Members
Our File No. I-86-275

Dear Dr. Bonagura:

You have requested advice regarding four of the members of the Board of Directors of the Tri-City Hospital District (the "district"). You have written with the specific authorization of all of the members of the board of directors, yourself included. The subject members have cooperated in providing the facts regarding their respective economic interests, including copies of their statements of economic interests. In addition, you have responded to questions regarding your own economic interests, and board member Margaret Merlock has separately provided supplemental information regarding her circumstances. The last of these supplemental materials was received by this office on November 3, 1986.

QUESTION

The board members request an explanation of their duties and responsibilities regarding possible disqualification as to future decisions which may come before the board.^{1/}

CONCLUSION

The advice provided is general in nature because no specific pending decisions have been presented for consideration. Based upon the facts presented, we conclude that some of the board members may be required, on occasion, to disqualify themselves from participating in board decisions. Some board members may also need to file amendments to their statements of economic interests.

^{1/} You have provided some information regarding past board actions, and I have previously informed you that the Commission does not provide advice regarding past actions.

FACTS AND ANALYSIS

Director Margaret Merlock

Facts

Director Merlock is a recovery room nurse who is employed by a private hospital, Scripps Memorial Hospital (hereafter "Scripps"), at its Encinitas facility. Her income from Scripps exceeds \$250 per year. More than five percent of the in-patient admissions at the Encinitas facility are from residents of the district. The Encinitas facility is located nearby, but outside the district's boundaries.

Scripps has acquired 72 acres of property located in the district and has received a certificate of need to build a 114-bed hospital on the acquired property. Additionally, Scripps plans to build a medical office building complex on the property. It is anticipated that Scripps will also offer out-patient services at free-standing centers which would be in direct competition with out-patient services offered by the district.

A review of Director Merlock's statement of economic interests shows an investment in Financial Management Institution, a management consulting firm, and the ownership of her own home and some property in New Mexico.^{2/} None of these three economic interests appear likely to be impacted by her governmental duties.

Analysis

The Political Reform Act (the "Act")^{3/} provides that no public official shall make, participate in making, or use his or her official position to influence the making of a governmental

^{2/} It should be noted that an official's personal residence is not reportable, nor is real property situated outside a two-mile radius around the official's jurisdiction. (Government Code Sections 82033, 82035 and 87206.)

^{3/} Government Code Section 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

decision in which he or she knows or has reason to know he or she has a financial interest. (Section 87100.)

A financial interest in a decision exists whenever the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the official or any member of the official's immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

Director Merlock has an economic interest in Scripps under both subsections (c) and (d) of Section 87103. As a result, she must disqualify herself from any decisions as a district director which will have a financial effect upon Scripps that is both reasonably foreseeable and material. Because Scripps is a business entity,^{4/} the standards in Regulation 18702.2

^{4/} Section 82005 defines business entity as any entity which is operated for profit.

will apply when determining whether the effect of a decision upon Scripps will be material.

Disqualification under the Act is not across-the-board, but is transactional, on a case-by-case basis. Disqualification does not apply to her private employment role as a Scripps nurse, but only to her public official role on the district's board of directors.

We have reviewed the advice letter from Joseph E. Sheeks (copy attached) which Director Merlock has submitted. We offer no comment on the portions of that letter which deal with laws other than the Act. However, as to the portion of the letter which interprets the Act, it is not complete in its advice. Disqualification may be required under the Act even where a governmental decision does not "directly" involve or concern the official's economic interest. Disqualification under the Act is required whenever the effect of a decision, even though indirect, is reasonably foreseeable and material. (See, Thorner Opinion, 1 FPPC Ops. 198, No. 75-089; and Witt v. Morrow (1977) 70 Cal. App. 3d 817; 139 Cal. Rptr. 161.)

Director Russell L. Thibodo

Facts

Director Thibodo reports that he is president and a greater than 10 percent owner of the following business entities:

- a. Thibodo Construction Co., Inc. - a general engineering contractor
- b. Devcorp - a development company
- c. Devco - a building contractor
- d. Corner Food Centers - a commercial business

In addition, Director Thibodo holds several interests in real property, including two which have been disclosed despite being situated outside the jurisdiction. (Sections 82033, 82035 and 87206.) Director Thibodo also reports receiving income (other than gifts and loans) from Thibodo Construction Company, Inc. and La Jolla Bank and Trust. He further reports outstanding loans from Bank of America and La Jolla Bank and Trust. His reporting of these loans does not show the required information regarding interest rate and security, if any. In response to my inquiry, you have indicated that the loan issued by La Jolla Bank and Trust was "made in the regular course of business upon terms generally available to the public."

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Lastly, Director Thibodo has reported loans to his business, Thibodo Construction Company, Inc. The reporting of those loans is also incomplete.

Your letter indicates that Director Thibodo has some unreported interests as well. Specifically, you have stated that Director Thibodo holds common stock in La Jolla Bank and Trust with a market value of more than \$10,000. You also indicate that the bank's stock is "publicly traded."^{5/} The La Jolla Bank and Trust had annual gross revenues in 1985 of \$34,918,000, annual net income of \$1,129,000, and current assets and liabilities of \$316,977,000 and \$290,659,000, respectively.

Analysis

Director Thibodo has numerous economic interests which could conceivably be affected by decisions made by the district's board of directors. He will need to examine each such interest to determine if a particular decision of the board will have a reasonably foreseeable material financial effect on any of his interests.

La Jolla Bank and Trust is an economic interest of Director Thibodo because of his ownership of more than \$1,000 in stock. This ownership is a basis for potential disqualification pursuant to Section 87103(a). His outstanding loan, which was made on terms available to the general public, is not a basis for potential disqualification pursuant to Section 87103(c).^{6/}

If the reasonably foreseeable effect of a board decision on La Jolla Bank and Trust will be material, Director Thibodo must

^{5/} Our review shows that La Jolla Bank and Trust is listed on the American Stock Exchange under the trading symbol LJC. It is not found in the Fortune Service 500.

^{6/} However, the loan must be disclosed unless it was made for the purchase of his personal residence, in which case it need not be disclosed. (Section 82030(b)(8).) Because Director Thibodo's reporting on his statement of economic interests is incomplete, it cannot be determined whether the loan was for purchase or refinancing of his personal residence. Director Thibodo should immediately amend his statement of economic interests. For assistance, he may contact the Commission's Technical Assistance and Analysis Division at (916) 322-5662.

disqualify himself. Since La Jolla Bank and Trust is publicly traded and is listed on the American Stock Exchange, the applicable guidelines are found in Regulation 18702.2(c). Thus, an effect upon La Jolla Bank and Trust will be material if it will increase or decrease:

- (1) its gross revenues for a fiscal year by \$250,000 or more; or
- (2) its expenses for a fiscal year by \$100,000 or more; or
- (3) its assets or liabilities by \$250,000 or more.

You have advised that La Jolla Bank and Trust has a security interest of approximately \$1,000,000 as a result of a loan to a business operated on certain property within the district. The property is used for a competing "surgicenter." A case-by-case analysis will be necessary to determine if the reasonably foreseeable effects of any given decision will be material as to the bank as a result of its security interest in the competing surgicenter.

Obviously, Director Thibodo also will be required to disqualify himself from any district decisions which will have a reasonably foreseeable material financial effect upon any of his own businesses. We have not been provided with any information to determine specifically which subsections of Regulation 18702.2 apply to his businesses. If subsection (g) is applicable, any decision which affects any of his companies' gross income by \$10,000 or more annually, or any of his companies' assets by \$10,000 or more annually, or any of their expenses by \$2,500 or more, will require disqualification.

In addition, Director Thibodo will be required to disqualify himself from participating in any way in a decision which will have a reasonably foreseeable material financial effect upon any source of income to him through his businesses. As an owner of more than 10 percent of these businesses, sources of income (i.e., clients or customers) to the businesses are sources of income to Director Thibodo on a pro rata basis. (Section 82030(a).) If he owns 100 percent of a business, 100 percent of the gross receipts from any customer or client are attributed to him. If he owns 50 percent of the business, 50 percent of the gross receipts are income to him.

Any customer or client of any of his businesses who is a source of pro rata income of \$250 or more in the 12 months preceding a given decision is an economic interest of Director

Thibodo pursuant to Section 87103(c). Disqualification will be required if the reasonably foreseeable effect of the decision on the customer or client will be material and distinguishable from the effect upon the public generally. (For the appropriate materiality standard, see Regulations 18702(b)(3) and 18702.1.) For example, if one of Director Thibodo's customers is a private physician whose practice would be affected materially by a decision of the Tri-City Hospital District Board, disqualification would be required unless the decision affected the public generally as well.

Lastly, you have inquired regarding possible disqualification stemming from Director Thibodo's real property interests. If a decision will have a reasonably foreseeable material financial effect upon any of his real property interests, disqualification would be required. For interests in real property, the materiality standards are found in Regulation 18702(b)(2).

Director Eugene L. Geil

Facts

Director Eugene L. Geil, like Director Thibodo, owns stock in La Jolla Bank and Trust. The stock is valued in excess of \$10,000. In addition, Director Geil discloses two interests in real property situated in the jurisdiction. It appears from his disclosure statement that neither of these is rental property. Director Geil has listed no income from any reportable source.

Analysis

The analysis for possible disqualification resulting from Director Geil's economic interest in La Jolla Bank and Trust is the same as for Director Thibodo. We cannot determine if he has any sources of income as to which he should be alert for possible disqualification. We do not imply in any way that Director Geil has failed to disclose reportable sources of income. There are numerous circumstances under which income would not be required to be disclosed for his position. (Section 82030(b).) Obviously, Director Geil cannot participate in decisions having a reasonably foreseeable material financial effect upon his real property interests. (See Regulation 18702(b)(2).)

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Director Lucas J. Bonagura

Facts

Director Lucas J. Bonagura, M.D., is a member of the medical staff at Tri-City Medical Center, which is a hospital operated by Tri-City Hospital District. Additionally, Director Bonagura is a shareholder with an investment of more than \$100,000, and greater than 10 percent, in North County Gastroenterology Medical Group, Inc., a California professional corporation. The medical group, along with other physicians, owns and operates an out-patient laboratory within the boundaries of the district for the sole use of patients of physician investors.

In response to my question, you have stated that there is no contractual relationship between the district and the North County Gastroenterology Medical Group. The physicians in the group have privileges at and use the facilities of the district hospitals as do other physicians in the area. The group provides gastroenterology services to its patients on an out-patient basis. Some of these types of services may also be performed at a district hospital and, in that sense, the group may at times be in competition with the hospital district.

The group operates a laboratory for the benefit of its patients. The laboratory is not available for use by members of the public generally. Typically, a physician performs some laboratory services in his office. In order to save on expenses, the laboratory is operated by 33 physicians who are tenants in the building where the laboratory is located.

In addition to the foregoing, Director Bonagura has reported numerous economic interests. He has a partnership interest worth more than \$100,000, and greater than 10 percent, in a medical office building held by MPSC, which is a joint venture in real estate. The former is apparently owned through two other partnerships in which Director Bonagura has investments of more than \$10,000, and greater than 10 percent. Those are BKH and KB partnerships. The BKH partnership also owns a cat scan machine, in addition to real estate.

Director Bonagura also has real property interests in two separate parcels, both of which are disclosed as rental properties. As to each of these parcels, he is disclosed as a greater than 10 percent owner.

In addition, Director Bonagura has reported that through North County Gastroenterology Profit Sharing & Pension Plan

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Trust he owns common stock worth more than \$10,000 in each of the following companies: General Electric, Tenneco, Proctor & Gamble, and Eastman Kodak. He has also reported an interest in a mutual fund bond fund; however, this interest probably need not have been disclosed because most mutual fund holdings do not constitute "investments" under Section 82034.

Director Bonagura reports income (other than gifts and loans) from the following sources:

- a. North County Neurology Associates - salary
- b. North County Gastroenterology Medical Group - fees for professional services
- c. BKH - distribution of surplus
- d. KB - distribution of surplus

As to the latter two disclosures, it should be noted that a 10 percent or greater owner of a business entity must disclose on Schedule D of the statement of economic interests his or her total pro rata share of the business' gross receipts, not merely actual profit distributions. (Sections 82030, 87207.) Furthermore, any source of income to the business entity resulting in \$10,000 or more, pro rata, in gross receipts for the official, must be disclosed on Schedule H.^{7/}

In addition, Director Bonagura has reported income in the form of outstanding loans from the following sources:

Betty Rogers
Donald O. Ward, M.D.
T. Devlin, M.D.
La Jolla Bank and Trust Co.

In response to my inquiry, you have stated that the La Jolla Bank and Trust Co. loan was made in the regular course of business on terms generally available to the public. The other three loans are all from individuals rather than from commercial lending institutions.

Analysis

The loan from La Jolla Bank and Trust does not create any basis for disqualification for Director Bonagura because it is from a commercial lending institution, in the regular course of business, made on terms available to the public without regard

^{7/} Director Bonagura may need to amend his statement of economic interests. If so, the amendment should be filed immediately. For assistance, he may phone (916) 322-5662.

to official status. (Section 87103(c).) The other loans, from individuals, do create a basis for potential disqualification. (Id.) Consequently, Director Bonagura must disqualify himself from participating in any way in hospital district decisions which will have a reasonably foreseeable material financial effect upon Betty Rogers, Dr. Ward or Dr. Devlin.^{8/} (Sections 87100, 87103(c); Regulations 18702(b)(3), 18702.1.) Of course, if the effect on any of these sources of income is substantially the same as the decision's effect upon a significant segment of the general public, disqualification would not be required. (Sections 87100, 87103; Regulation 18703.)

Obviously, disqualification is also required for Director Bonagura whenever a decision will have a reasonably foreseeable material financial effect, distinguishable from the effect upon the public generally, on any of the business entities in which Director Bonagura holds an investment or from which he receives income. Thus, he cannot participate in hospital district decisions which may have such an effect upon the North County Gastroenterology Medical Group, its laboratory, or on the North County Neurology Associates. (For instance, decisions which alter the district's policies regarding use of its facilities by physicians participating in the group or alter the district's policies regarding use of, or services performed by, the district's laboratories.) This rule also applies to decisions affecting General Electric, et al. However, the applicable materiality standards are markedly different. (See, Regulation 18702.2.) Such decisions could arise whenever any of the foregoing entities is contracting with or competing with Tri-City Hospital District. Without detailed facts regarding specific decisions, it is impossible for this agency to judge how frequently or infrequently such circumstances may arise. In addition, if situations arise involving contracts with Director Bonagura's local interests, a review of the provisions of Section 1090 is advised. For advice on that statute, which is outside the Act, you should consult with your agency counsel.

Furthermore, with respect to those businesses in which Director Bonagura owns a 10 percent or greater interest, disqualification will also be required if a decision will have the requisite effect upon any source of income to the particular business entity. For instance, this could include some or all of the tenants in the medical building owned by the KB partnership, or users of the cat scan owned by the BKH partnership. Any one of the tenants or clients who have resulted in a pro rata share of gross receipts to Director

^{8/} With respect to Doctors Ward and Devlin, decisions having such an effect could include those involving granting or extending staff privileges at district hospitals.

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Bonagura of \$250 or more during the preceding 12 months can form the basis for disqualification.

As with the other directors, Director Bonagura would be required to disqualify himself as to any decisions which will have a reasonably foreseeable material financial effect upon any of his real property interests where the effect is distinguishable from the effect upon the public generally.


Lastly, Director Bonagura's position as a member of the medical staff at the Tri-City Medical Center, which is a district hospital, does not create any automatic disqualification requirements. The provisions of Regulations 18700 and 18702.1 will apply to any decisions affecting his own salary. Salary received from a governmental entity such as the district is not income under the Act. (Section 82030(b)(2).) For a further discussion of the general types of issues which can arise in such situations, I enclose a previous advice letter to the West Valley Hospital District. (Jenke, Advice Letter No. A-83-001.) We do not comment here upon any possible issues under Section 1090. As noted above, you should consult with your agency counsel for advice on that statute.

The instant letter does not render specific disqualification advice regarding specific decisions because no pending decisions were presented for our consideration. If specific advice is desired by any of the directors as to decisions in the future, they should write seeking such advice. This letter is intended to point out those situations where such an inquiry may be appropriate. In particular, whenever decisions come before the directors which can be expected to have an impact upon competing or cooperating medical practitioners or facilities, a careful review will need to be conducted to ascertain whether any of the several directors' numerous economic interests within the medical community will be materially affected.

Should any of the directors have questions regarding the advice contained herein, the undersigned may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:km
Enclosures



California Fair Political Practices Commission

February 13, 1987

Lucas J. Bonagura, M.D., President
Tri-City Hospital District
Board of Directors
4002 Vista Way
Oceanside, CA 92056-4593

Re: Your Request for Advice
Follow-up to Our File
No. I-86-275

Dear Dr. Bonagura:

You have written seeking further assistance regarding an earlier request. Our initial response to you was contained in letter No. I-86-275. You have now provided additional facts regarding Director Margret Merlock's employer which were not provided in your previous request. Your letter seeks informal assistance.^{1/}

QUESTION

What standard should be applied to determine whether the reasonably foreseeable financial effect of a decision will be material as to the private, nonprofit tax-exempt hospital which employs Director Merlock?

CONCLUSION

Since Director Melock's employer is not a business entity within the meaning of regulations adopted pursuant to the Political Reform Act, she must disqualify herself from making, participating in or influencing decisions which will have a "significant" financial effect as defined in Regulation 18702.

^{1/} Your letter states only a general question; it does not seek advice concerning a specific pending decision. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written assistance. (Section 83114; Regulation 18329(c)(3).)

FACTS

In response to your previous request for informal assistance on behalf of several directors of the Tri-City Hospital District, we provided guidance for determining when disqualification might be required. For Director Merlock's employer, Scripps Memorial Hospital ("Scripps"), we provided you with the materiality standards to be utilized for evaluating effects upon a business entity. Subsequently, you have determined that Scripps is not a business entity within the meaning of the Political Reform Act (the "Act").^{2/} Scripps is a nonprofit entity and, hence, does not satisfy the definition of a "business entity" contained in Section 82005. Scripps currently has assets of \$99,791,997, and its total combined collectible revenues for the fiscal year ending September 30, 1985, were \$98,927,348.

ANALYSIS

The Act provides that no public official shall make, participate in making, or use his or her official position to influence the making of a governmental decision in which he or she has a financial interest. (Section 87100.)

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:...

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made....

Section 87103.

^{2/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Scripps is a source of income to Director Merlock. Therefore, she must disqualify herself if a decision will have a reasonably foreseeable material financial effect on Scripps, distinguishable from its effect on the public generally.

In order to determine whether disqualification is required with respect to a particular decision, it must be determined if the effect will be "material" as to the source of income. In our previous letter, we advised you of the standards applicable for determining materiality for business entity sources of income. (Regulation 18702.2.) However, Scripps is not a business entity as defined in Section 82005. It is a nonprofit, tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code. As such, Regulation 18702(b)(3)(D) controls for determination of the materiality question. That subsection of the regulation contains the rule that a financial effect is "material" if it is "significant."^{3/}

Unlike the detailed guidelines for business entities contained in Regulation 18702.2, the Commission has not adopted a specific set of guidelines for determining materiality for nonbusiness entity sources of income. Your letter of

^{3/} Regulation 18702 provides in pertinent part:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:...

...(3) Whether, in the case of a source of income as defined in Government Code Section 87103(c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made:...

...(D) If the source of income is not a business entity, the decision will have a significant effect on the source.

January 12, 1987, indicates that Scripps is quite large: It has nearly \$100 million in assets and nearly \$100 million in annual revenues. Clearly, for a nonprofit organization which is that large, a financial effect must be quite substantial to be considered material. Just as clearly, the guideline for materiality for most nonprofit organizations will not be as great as for the largest for-profit corporations, such as those on the Fortune 500 lists.^{4/}

We decline to provide more specific guidance until Director Merlock presents us with a specific, pending decision for our consideration. Until that time, your question is too hypothetical to make more specific advice appropriate.^{5/} (See Regulation 18329(c)(4)(F), copy enclosed.) In the past, we have provided similar general guidance to the employee of an osteopathic college in response to a request which provided no specific facts as to the magnitude of a pending decision's anticipated effects. (See, Pitts Advice Letter, No. A-85-028, copy enclosed.)^{6/}

We trust that this letter assists the District and Director Merlock in assessing potential disqualification situations.

^{4/} Generally, the economic size of the largest for-profit corporations is far greater than that of individuals or nonprofit entities which may be sources of income to officials. We have advised an employee of Stanford University, a very large nonprofit organization, that disqualification was required where a particular decision would affect Stanford's assets (i.e., real property) by several million dollars. Since a \$1 million effect on the assets of a Fortune 500 company would be material (Regulation 18702.2(c)(3)), it was clear that an effect of more than \$1 million would be considered material as to Stanford.

^{5/} Your letter states that there are two possible decisions which could foreseeably affect Scripps. One involves a proposed alternative compensation system for employees of Tri-City Hospital District. The second involves a possible increase in service charges. You feel that either of these could affect Scripps, which is a "competitor" of Tri-City. However, facts concerning the magnitude of these effects have not been provided.

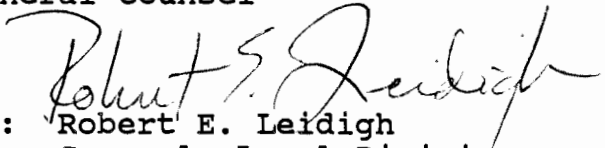
^{6/} We have also discussed Stanford University in several prior advice letters. The following may be of interest (copies enclosed): Jorgensen Advice Letter, No. A-82-214; and Weatherspoon Advice Letter, No. A-77-057.

Lucas J. Bonagura, M.D., President
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Should Director Merlock have a specific question regarding a pending decision, she should feel free to contact this office. For questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
Enclosure
cc: Director Merlock



Tri-City Medical Center

4002 Vista Way, Oceanside, California 92056, (619) 724-8411

January 12, 1987

JAN 13 8 51 AM '87

Richard A. Hachten II
Chief Executive Officer

Robert E. Leidigh, Esq.
Counsel - Legal Division
California Fair Political
Practices Commission
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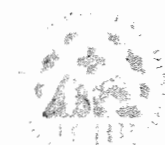
Re: Our Request For Advice Regarding Director
Margret D. Merlock - Your File No. 86-275

Dear Mr. Leidigh:

In response to your letter of December 23, 1986 requesting the annual revenues and value of assets (land, structures, equipment, etc.) at Scripps Memorial Hospital, we provide you with the following public information:

1. Value of Assets - Total assets as of fiscal year end September 30, 1985 approximated \$99,791,997.00 for the Scripps Memorial Hospitals located in Encinitas and La Jolla, California. Since that date, it is our understanding that Scripps Memorial Hospital has also acquired a facility previously known as Bay Hospital Medical Center in Chula Vista, California, and property located within the Tri-City Hospital District boundaries on which Scripps plans to build a hospital. These numbers are from the balance sheet portion of the annual report for Scripps Memorial Hospitals and consequently represent historical costs and not fair market value and reflect values for both the La Jolla and Encinitas facilities, only.

2. Annual Revenues - From the same financial report, the total combined collectible revenues for the Encinitas and La Jolla facilities of Scripps Memorial Hospital equal \$98,927,348.00 for fiscal year end September 30, 1985. Neither facility reported intangible assets on the September 30, 1985 fiscal year end balance sheet.



Robert E. Leidigh, Esq.
California Fair Political
Practices Commission

January 12, 1987
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You have also requested information with regard to potential effects on Scripps of any pending decisions by Tri-City Hospital District. At the present, there is a pending decision with regard to an alternative compensation system for employees at Tri-City Hospital District. Any type of compensation system proposed by Tri-City could result in changes in the competitive benefits provided in the work place which could adversely or beneficially impact the Scripps Memorial Hospitals. An example of an additional issue which may be pending is an increase in service charges which could also benefit or adversely impact the Scripps Memorial Hospitals.

I hope the foregoing information is beneficial. We will be happy to assist you in the event additional information is needed.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lucas J. Bonagura", with a stylized flourish at the end.

Lucas J. Bonagura, M. D.
President
Tri-City Hospital District
Board of Directors

RAH:vp

c: Members of the Board
Richard A. Hachten II
Alan I. Epstein, Esq.



Tri-City Medical Center

4002 Vista Way, Oceanside, California 92056, (619) 724-8411

December 12, 1986

DEC 15 9 40 AM '86
Richard A. Hachten II
Chief Executive Officer

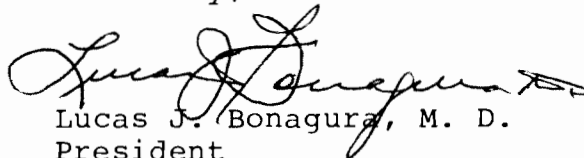
Robert E. Leidigh
Counsel, Legal Division
California Fair Political
Practices Commission
Post Office Box 807
Sacramento, California 95804-0807

Re: Your File Number I-86-275

Dear Mr. Leidigh:

We have reviewed your letter and note that we have left out one important fact: Scripps Memorial Hospital is a non-profit corporation qualified as a section 501(c)(3) entity pursuant to the Internal Revenue Code. Could you please advise the Board of Directors as to the appropriate analysis that must be done under section 87103(c) of the Government Code. If Regulation 18702(b)(3) applies, could you also please advise us as to the analysis that must be done under that regulation for a source of income not from a business entity and refer us to any past advice letters that may be of reference to Director Merlock.

Sincerely,



Lucas J. Bonagura, M. D.
President
Tri-City Hospital District
Board of Directors

LJB:bp



JOSEPH E. SHEEKS
DEAN L. JOHNSON
LAURENCE D. GETZOFF

LAW OFFICES OF
JOSEPH E. SHEEKS
PROFESSIONAL CORPORATION
1010 B STREET, SUITE 230
SAN RAFAEL, CALIFORNIA 94901
October 21, 1986

TELEPHONE (415) 457-9191

Ms. Margret D. Merlock, R.N.
1905 Calle Buena Ventura
Oceanside, California 92056

Subject: Conflict of Interest

Dear Ms. Merlock:

You have asked our opinion as to whether an actual or potential conflict of interest occurs by reason of your position as a member of the Board of Directors of Tri-City Hospital District, while being employed as a charge nurse at the Scripps Memorial Hospital in Encinitas.

In our opinion, no conflict of interest exists.

You state that you have been employed for over nine years at Scripps, which is a private, seventy-bed facility. It appears that more than 5% of the patients utilizing Scripps are residents of the Tri-City Hospital District. You have furnished us with an organization chart of Scripps Memorial Hospital-Encinitas, showing that in your position as a nurse supervising a six-bed recovery room, you are near the bottom of the ladder, insofar as the management or supervisory hierarchy is concerned.

Discussion

Three different statutes provide the basis for determining whether you face an actual or potential conflict of interest in this situation. The Political Reform Act of 1974 (Government Code Sections 81000, et seq.), Government Code Sections on conflicts of interest in contracting (Government Code Sections 1090, et seq.), and a provision of the Local Hospital District Law (Health and Safety Code Section 32110) -- all govern the question of whether a conflict of interest arises in any specific situation. In addition, Health and Safety Code Section 32110 has been amended, effective January 1, 1987, and the amendment may help determine whether a conflict of interest exists in this situation.

Government Code Sections 1090, et seq.

Government Code Section 1090 states a restriction on the ability of any officer of a local agency to contract or enter into

Ms. Margret D. Merlock, R.N.
October 21, 1986
Page 2

sales and/or purchase agreements in which the agency has an interest. The section states in pertinent part:

"Members of the legislature, state, county, district, judicial district, and the city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members"

However, an exemption exists:

- (a) if the interest in such contract is a remote one;
- (b) if the fact of any such interest is disclosed to the legislative body of which the person is a member; and
- (c) if any vote of approval or ratification of the contract is made in good faith by vote of the legislative body without counting the vote or votes of the officer or members who have any "remote interest."

On its face, Government Code Sections 1090, et seq., should pose no problem to a director of a hospital district who is a charge nurse in a private hospital, where the private hospital serves, at least in part, residents of the district. On a day-to-day basis there would not appear to be any connection between the duties of the hospital district director as a charge nurse in the recovery room of a private hospital and any decisions made by the District Board of Directors. Most contracts that would come up for review before the District Board of Directors would have absolutely no impact on any duties of the director as a charge nurse elsewhere.

Without going into detail, it is clear from reading the sections following Section 1090 which define "remote interest," that your interest is a "remote" one within the meaning of those sections.

Moreover, in researching the history of Sections 1090, et seq., I find further that it would not be construed to be the intent of these sections to disqualify members of district boards of directors who may merely be employed in the work force of other hospital facilities in the area. Rather, its intent is to prevent district directors with an active and/or direct economic interest in contracts, sales and purchase agreements, and other similar agreements, from participating in legislative decisions related to the economic interests of such hospital district directors. It is clear to us that the effect of Sections 1090, et seq., is to

Ms. Margret D. Merlock, R.N.
October 21, 1986
Page 3

prohibit participation on a hospital district board by higher level officials of another hospital or by physicians and medical staff officers of the district hospital when the board undertakes matters in which the physician or hospital official has a financial interest.

The goals and policy concerns underlying Sections 1090, et seq., are to eliminate the appearance of impropriety, and to assure the governmental body and constituency of the officers' undivided and uncompromised allegiance. Such allegiance is not usually affected by a director's mere employment at a non-management level elsewhere in the private sector.

The Political Reform Act, Government Code Sections 81000, et seq.

The Political Reform Act of 1974 was enacted to curb several activities which threatened to compromise the political process and the integrity of elected officials. Among other objectives, the Political Reform Act, in Sections 87100, et seq., while primarily aimed at disclosure of conflicts, seeks to control conflicts of interest in governmental decisions. As a general statement, Section 87100 states:

"No public official at any level of state or local government shall make or participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Section 87103 defines "financial interest." Generally, a "financial interest" includes a direct or indirect investment in a business entity of over \$1,000, interest in real property under consideration by the legislative body, income received from an entity with which the public body is dealing, and/or any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. In addition, Section 87200, et seq., provides that a public official must disclose any interest in a business entity with which the governmental body is considering doing business. That aspect is adequately covered by Government Code Sections 1090, et seq., as described above. However, the Political Reform Act does not go so far as to preclude a governmental official from having any interest in some other business entity, whether as an employee or otherwise. Rather, the Political Reform Act seeks disclosure by the governmental official of any potential conflict of interest and seeks to discourage the public official from taking part in

Ms. Margret D. Merlock, R.N.
October 21, 1986
Page 4

any decision directly concerning the business entity in which the public official has an interest of any kind.

By virtue of your employment with a private hospital facility serving an area at least in part within the district boundaries, you clearly would have a "financial interest" in any decision by Tri-City which directly involved a dealing with the Scripps-Encinitas facility. However, for purposes of other decisions which would not affect the Encinitas facility directly, there would be no conflict of interest. In addition, should any matter arise which directly concerns the private facility in question, you would merely have to disclose your interest and abstain from taking part in the decision. Once again, of far more direct concern, would be a situation wherein a medical staff officer, physician, or other hospital officer had an interest in a joint venture or other contractual matter under consideration by the District Board of Directors, which interest exceeded \$1,000. The latter case would probably occur far more often and would present a virtually endless series of conflicts for such hospital or medical staff official.

Health and Safety Code Section 32110

A provision of the Local Hospital District Law, specifically Health and Safety Code Section 32110, also states a restriction on a district officer's ability to hold a management position with a private facility, if 5% or more of the facility's patients are residents of the district in question. Section 32110 states in pertinent part:

" . . . For the purposes of this section, a "private hospital" shall be considered to serve the same area as a district hospital when more than five percent of the private hospital's inpatient admissions are residents of the district. No person who is a director or an officer of, or who occupies any management position or office whatsoever, on the administrative staff of any such private hospital, shall be eligible for or hold any district office or any management position or office whatsoever in any district hospital"

For the purposes of this discussion, it is reasonably likely that with regard to the Scripps-Encinitas facility, at least five percent of the patients reside in the Tri-City Hospital District. It is therefore necessary to determine whether your employment as a charge nurse constitutes a management position as would disqualify you from service on the District Board of Directors.

Ms. Margret D. Merlock, R.N.
October 21, 1986
Page 5

In resolving this question, it is crucial to note that Health and Safety Code Section 32110 has been amended during the current State Legislative Session, which amendment will take effect on January 1, 1987. In pertinent part, the amendment to Section 32110 clarifies what is meant by "any management position or office whatsoever" in Section 32110 as it reads presently. The amended Section 32110 substitutes the term "policy-making management employee" for the present term "any management position or office whatsoever."

Our firm has been directly involved in the writing, passage and amendment of Section 32110. SB 945, which we caused to be introduced in January, 1985, was intended to deal with situations arising in two other district hospitals. It is clear from the Legislative intent behind Section 32110, that the restrictions placed on district officers were intended to affect only such management positions as are upper level management and which may affect policy decisions. Even prior to this amendment, there was never an intention to limit the right of an arguably low(est) level manager, unconnected with any policy decision, to serve as a director on the board of a local hospital district. There is absolutely no evidence that the amended language is intended to modify the prior meaning of 32110.

When viewed in the context of this legislative background, it is obvious that no conflict of interest arises from your employment as a charge nurse in the recovery room of Scripps Memorial Hospital, Encinitas. You serve in no hospital policy-making position at Scripps.

To state it succinctly, there is no conflict of interest.

Very sincerely,

Law Offices of
JOSEPH E. SHEEKS, P.C.



Joseph E. Sheeks

JES:imi



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TRI-CITY MEDICAL CENTER

25 Years of Caring

Richard A. Hachten II
Chief Executive Officer

September 11, 1986

Diane M. Griffiths, General Counsel
Fair Political Practices Commission
Legal Division
P.O. Box 807
Sacramento, California 95814

Re: Request for Advice, Government Code 83114

Dear Ms. Griffiths,

Tri-City Hospital District ("the District") is a hospital district formed pursuant to The Local Hospital District Law set forth at Section 32000 et seq. of the Health & Safety Code. The District is governed by a five member Board of Directors about four of whom questions have been raised concerning possible conflicts of interest within the purview of the Political Reform Act.

1. Margret Merlock - Director Merlock is employed by Scripps Memorial Hospital-Encinitas as a recovery room supervisor. Her income from Scripps Memorial Hospital-Encinitas exceeds \$250 per year. Mrs. Merlock has held this position since June 16, 1977. Scripps Memorial Hospital-Encinitas is a private hospital with more than 5% of its inpatient admissions from residents of the District. Scripps Memorial Hospital-Encinitas is not located within the District but is located in a nearby area.

Scripps Memorial Hospital has acquired 72 areas of property located within the District and received a Certificate of Need to build a 114 bed hospital on the acquired property. Additionally, Scripps plans to build a medical office building complex on the property. It is anticipated that Scripps Memorial Hospital will also offer outpatient services at free-standing centers which would be in direct competition with outpatient services offered by Tri-City Hospital District.

2. Eugene Geil, Russell Thibodo - Directors Geil and Thibodo each have stock holdings of less than 3% of the outstanding common stock of La Jolla Bank & Trust (the "Bank"), which is publicly traded and has a fair market value of greater than \$10,000.00. Their annual income from the stock constitutes less than 5% of their annual income from all sources. Director Thibodo serves as a member of a "community advisory council" to the Bank for which he receives no compensation. The advisory council has no management authority or responsibility. Director Thibodo has an outstanding loan of over \$10,000 from the Bank. The Bank had fiscal 1985 annual gross revenues of \$34,918,000; annual net income of \$1,129,000 and current assets and liabilities of \$316,977,000 and \$290,659,000, respectively.

On December 19, 1985, the Board of Directors of the District voted to take steps to commence eminent domain proceedings on the real property located at 2067 Vista Way, Vista, California, possible uses for which included an outpatient surgicenter. Aye votes were cast by Directors Geil, Bonagura, Thibodo and Reno; and a no vote was cast by Director Merlock. Subsequently, the Board voted unanimously to discontinue pursuit of the property through eminent domain. On January 9, 1986, a resolution was introduced to have the District lease a portion of the medical office building located at 2067 West Vista Way, Vista, California to be completed as an outpatient surgicenter (the "Hospital Surgicenter"). Aye votes were cast by Directors Merlock and Reno; no votes were cast by Directors Geil and Thibodo. Director Bonagura was not present. The Hospital Surgicenter, when completed, would have been in competition with a surgicenter, owned by 24 physicians who perform a significant number of outpatient surgical procedures at 4129 Waring Road, Vista, California ("the Private Surgicenter"). The Bank is a lender of a secured construction loan of approximately \$1,000,000, which was considered by the Bank to be not greater than 70% of the fair market value of the Private Surgicenter.

Directors Geil and Thibodo each own property located within the jurisdiction of the District with a fair market value in excess of \$10,000.

3. Lucas J. Bonagura, M.D. - Director Bonagura is a member of the medical staff at Tri-City Medical Center which is a District hospital. Additionally, Director Bonagura is a shareholder with a greater than 10% interest in North County Gastroenterology Medical Group, Inc., a California professional corporation which is valued at over \$100,000. The medical group along with other physicians owns and operates an outpatient laboratory

Re: Request for Advice, Government Code 83114
September 11, 1986
Page three

within the boundaries of the District for the sole use of patients of physician investors. Director Bonagura provides professional services as an independent contractor to North County Gastroenterology Medical Group, Inc.

Director Bonagura also has an outstanding loan from the Bank in excess of \$10,000.

Based on the foregoing facts, the Board of Directors of the District poses the following questions to which we respectfully request the advice of the Fair Political Practices Commission:

1. Does Director Merlock have a "financial interest" in Scripps Memorial Hospital?

2. May Director Merlock participate in decisions of the Board as defined by California Administrative Code 18700 which affect Scripps Memorial Hospital?

3. May Directors Geil and Thibodo participate in decisions of the Board which may affect their property holdings within the jurisdiction of the District?

4. Is Director Bonagura disqualified from participating in decisions of the Board regarding:


a) the Medical Staff; or

b) laboratory or gastroenterology services offered or funded by the District which may be in competition with those offered by the North County Gastroenterology Medical Group;

5. Is any Director prohibited from participating in governmental decisions regarding the capitalization, lease, acquisition or operation of a free-standing Hospital Surgicenter?

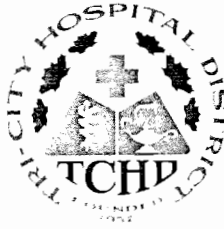
Over the past few months these issues have arisen on numerous occasions. Consequently, we would appreciate your advice at the soonest possible opportunity.

Sincerely,


Lucas J. Bonagura, M.D.
President, Tri-City
Hospital District Board
of Directors

LJB/kb/48

cc: Members of the Board
Richard A. Hachten II
Al Epstein



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TRI-CITY MEDICAL CENTER

25 Years of Caring

Richard A. Hachten II
Chief Executive Officer

October 16, 1986

Robert E. Leidigh, Esq.
Counsel - Legal Division
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95814

Re: Advice No. 86-275

Dear Mr. Leidigh:

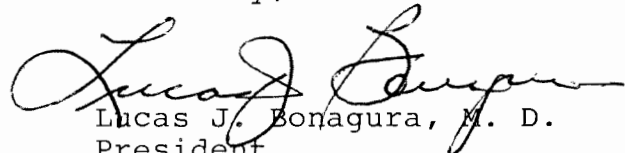
Pursuant to your letter of October 10, 1985, I enclose herewith the most recent Statements of Economic Interests for Directors Thibodo, Merlock, Geil and Bonagura and a map of the area showing the District boundaries and locations of the facilities and property in question.

As to your question about the North County Gastroenterology Medical Group, there is no contractual relationship between the District and the Group. The physicians in the Group have privileges at and use the facilities of the District hospitals as do other physicians in the area. The Group provides gastroenterology services to its patients on an outpatient basis, some of which may also be performed at a District hospital and in that sense, may at times be in competition with the hospital. The Group operates a laboratory for the benefit of its patients. The laboratory is not available for use of members of the public generally. Typically, a physician performs some laboratory services in his office. In order to save on expenses, the laboratory is operated by 33 physicians who are tenants in the building where the laboratory is located.

Robert E. Leidigh, Esq.
October 16, 1986
Page 2

I hope the foregoing adequately answers your questions. The Board of Directors is anxious to receive the advice of the Commission and will be happy to assist you if additional factual information is needed.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lucas J. Bonagura". The signature is fluid and cursive, with a large initial "L" and "B".

Lucas J. Bonagura, M. D.
President
Tri-City Hospital District
Board of Directors

LJB/TLS/nb/bp
cc: Members of the Board
Richard A. Hachten II
Alan Epstein



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TRI-CITY MEDICAL CENTER

25 Years of Caring

Richard A. Hachten II
Chief Executive Officer

September 23, 1986

Robert E. Leidigh, Esq.
Counsel, Legal Division
California Fair Political Practices Commission
P.O. Box 807
Saramento, California 95804-0807

RE: Request for Formal Written Advice
File No. 86-275

Dar Mr. Leidigh:

We are in receipt of your letter of September 19, 1986 requesting additional information in order to meet our request for formal written advice. Our answers are as follows:

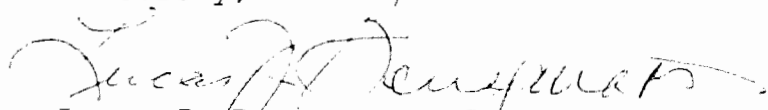
1) As to your first question, I am the President and Chairman of the Board of Tri-City Hospital District Board of Directors and have been requested by each member of the Board to seek the formal written advice of the Fair Political Practices Commission with regard to the facts stated in our previous letter. I enclose herewith an extraction from the minutes of the Board of Directors meeting of August 28, 1986 in which it was decided upon motion, unanimously carried, that the appropriate governmental body, such as the Fair Political Practices Commission, was to be contacted to seek their advice with regard to possible conflict of interests on behalf of the members of the Board.

2) As to your second question, we are only seeking formal written advice as to future conduct. We have provided you with facts with regard to prior actions of the Board of Directors only as background information to assist you in providing us with an appropriate response.

3) With respect to your third question, the loans issued by La Jolla Bank and Trust to Directors Thibodo and Bonagura were made in the regular course of business upon terms generally available to the public. Both Directors received conventional loans without special consideration.

We hope the foregoing responses are sufficient, however, if you need additional information, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lucas J. Bonagura". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lucas J. Bonagura, M.D.
President, Tri-City Hospital District
Board of Directors

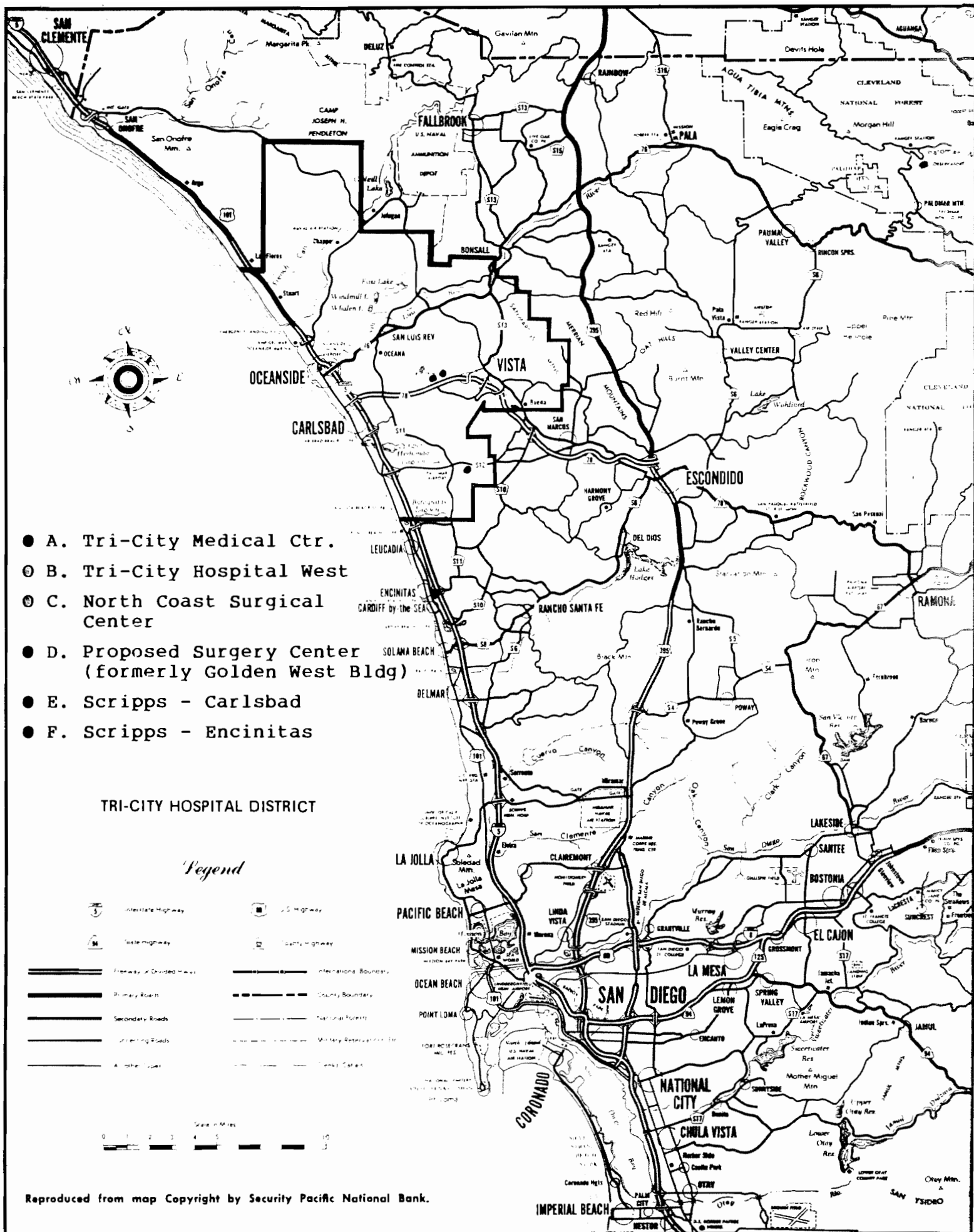
LJB/smp

cc: Members of the Board
Richard A. Hachten II
Alan I. Epstein

EXTRACTED FROM MINUTES OF BOARD OF DIRECTORS

AUGUST 28, 1986

"After discussion, upon motion duly made by Director Thibodo, seconded by Director Reno and unanimously carried, it was moved that the President or Chief Executive Officer, contact the appropriate governmental bodies, such as Fair Political Practices Commission, Attorney General, District Attorney and get their opinions on a possible conflict interest of board members and to make a public report when the answers are received."

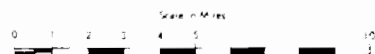


- A. Tri-City Medical Ctr.
- ⊙ B. Tri-City Hospital West
- ⊙ C. North Coast Surgical Center
- D. Proposed Surgery Center (formerly Golden West Bldg)
- E. Scripps - Carlsbad
- F. Scripps - Encinitas

TRI-CITY HOSPITAL DISTRICT

Legend

	Interstate Highway		U.S. Highway
	State Highway		County Highway
	Freeway or Divided Hwy		International Boundary
	Primary Roads		County Boundary
	Secondary Roads		National Park
	Intersecting Roads		Military Reservation
	A. Other Roads		Army Camp





California Fair Political Practices Commission

February 13, 1987

Lucas J. Bonagura, M.D., President
Tri-City Hospital District
Board of Directors
4002 Vista Way
Oceanside, CA 92056-4593

Re: Your Request for Advice
Follow-up to Our File
No. I-86-275

Dear Dr. Bonagura:

You have written seeking further assistance regarding an earlier request. Our initial response to you was contained in letter No. I-86-275. You have now provided additional facts regarding Director Margret Merlock's employer which were not provided in your previous request. Your letter seeks informal assistance.^{1/}

QUESTION

What standard should be applied to determine whether the reasonably foreseeable financial effect of a decision will be material as to the private, nonprofit tax-exempt hospital which employs Director Merlock?

CONCLUSION

Since Director Melock's employer is not a business entity within the meaning of regulations adopted pursuant to the Political Reform Act, she must disqualify herself from making, participating in or influencing decisions which will have a "significant" financial effect as defined in Regulation 18702.

^{1/} Your letter states only a general question; it does not seek advice concerning a specific pending decision. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written assistance. (Section 83114; Regulation 18329(c)(3).)

FACTS

In response to your previous request for informal assistance on behalf of several directors of the Tri-City Hospital District, we provided guidance for determining when disqualification might be required. For Director Merlock's employer, Scripps Memorial Hospital ("Scripps"), we provided you with the materiality standards to be utilized for evaluating effects upon a business entity. Subsequently, you have determined that Scripps is not a business entity within the meaning of the Political Reform Act (the "Act").^{2/} Scripps is a nonprofit entity and, hence, does not satisfy the definition of a "business entity" contained in Section 82005. Scripps currently has assets of \$99,791,997, and its total combined collectible revenues for the fiscal year ending September 30, 1985, were \$98,927,348.

ANALYSIS

The Act provides that no public official shall make, participate in making, or use his or her official position to influence the making of a governmental decision in which he or she has a financial interest. (Section 87100.)

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:...

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made....

Section 87103.

^{2/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Scripps is a source of income to Director Merlock. Therefore, she must disqualify herself if a decision will have a reasonably foreseeable material financial effect on Scripps, distinguishable from its effect on the public generally.

In order to determine whether disqualification is required with respect to a particular decision, it must be determined if the effect will be "material" as to the source of income. In our previous letter, we advised you of the standards applicable for determining materiality for business entity sources of income. (Regulation 18702.2.) However, Scripps is not a business entity as defined in Section 82005. It is a nonprofit, tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code. As such, Regulation 18702(b)(3)(D) controls for determination of the materiality question. That subsection of the regulation contains the rule that a financial effect is "material" if it is "significant."^{3/}

Unlike the detailed guidelines for business entities contained in Regulation 18702.2, the Commission has not adopted a specific set of guidelines for determining materiality for nonbusiness entity sources of income. Your letter of

^{3/} Regulation 18702 provides in pertinent part:

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:...

...(3) Whether, in the case of a source of income as defined in Government Code Section 87103(c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made:...

...(D) If the source of income is not a business entity, the decision will have a significant effect on the source.

Lucas J. Bonagura, M.D., President
February 13, 1987
Page 4

January 12, 1987, indicates that Scripps is quite large: It has nearly \$100 million in assets and nearly \$100 million in annual revenues. Clearly, for a nonprofit organization which is that large, a financial effect must be quite substantial to be considered material. Just as clearly, the guideline for materiality for most nonprofit organizations will not be as great as for the largest for-profit corporations, such as those on the Fortune 500 lists.^{4/}

We decline to provide more specific guidance until Director Merlock presents us with a specific, pending decision for our consideration. Until that time, your question is too hypothetical to make more specific advice appropriate.^{5/} (See Regulation 18329(c)(4)(F), copy enclosed.) In the past, we have provided similar general guidance to the employee of an osteopathic college in response to a request which provided no specific facts as to the magnitude of a pending decision's anticipated effects. (See, Pitts Advice Letter, No. A-85-028, copy enclosed.)^{6/}

We trust that this letter assists the District and Director Merlock in assessing potential disqualification situations.

^{4/} Generally, the economic size of the largest for-profit corporations is far greater than that of individuals or nonprofit entities which may be sources of income to officials. We have advised an employee of Stanford University, a very large nonprofit organization, that disqualification was required where a particular decision would affect Stanford's assets (i.e., real property) by several million dollars. Since a \$1 million effect on the assets of a Fortune 500 company would be material (Regulation 18702.2(c)(3)), it was clear that an effect of more than \$1 million would be considered material as to Stanford.

^{5/} Your letter states that there are two possible decisions which could foreseeably affect Scripps. One involves a proposed alternative compensation system for employees of Tri-City Hospital District. The second involves a possible increase in service charges. You feel that either of these could affect Scripps, which is a "competitor" of Tri-City. However, facts concerning the magnitude of these effects have not been provided.

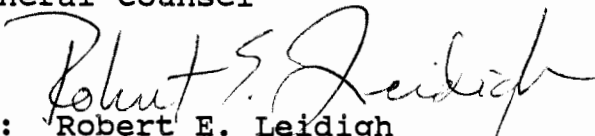
^{6/} We have also discussed Stanford University in several prior advice letters. The following may be of interest (copies enclosed): Jorgensen Advice Letter, No. A-82-214; and Weatherspoon Advice Letter, No. A-77-057.

Lucas J. Bonagura, M.D., President
February 13, 1987
Page 5

Should Director Merlock have a specific question regarding a pending decision, she should feel free to contact this office. For questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
Enclosure
cc: Director Merlock



Tri-City Medical Center

4002 Vista Way, Oceanside, California 92056, (619) 724-8411
January 12, 1987

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Richard A. Hachten II
Chief Executive Officer

Robert E. Leidigh, Esq.
Counsel - Legal Division
California Fair Political
Practices Commission
428 "J" Street, Suite 800
Post Office Box 807
Sacramento, California 95804-0807

Re: Our Request For Advice Regarding Director
Margret D. Merlock - Your File No. 86-275

Dear Mr. Leidigh:

In response to your letter of December 23, 1986 requesting the annual revenues and value of assets (land, structures, equipment, etc.) at Scripps Memorial Hospital, we provide you with the following public information:

1. Value of Assets - Total assets as of fiscal year end September 30, 1985 approximated \$99,791,997.00 for the Scripps Memorial Hospitals located in Encinitas and La Jolla, California. Since that date, it is our understanding that Scripps Memorial Hospital has also acquired a facility previously known as Bay Hospital Medical Center in Chula Vista, California, and property located within the Tri-City Hospital District boundaries on which Scripps plans to build a hospital. These numbers are from the balance sheet portion of the annual report for Scripps Memorial Hospitals and consequently represent historical costs and not fair market value and reflect values for both the La Jolla and Encinitas facilities, only.

2. Annual Revenues - From the same financial report, the total combined collectible revenues for the Encinitas and La Jolla facilities of Scripps Memorial Hospital equal \$98,927,348.00 for fiscal year end September 30, 1985. Neither facility reported intangible assets on the September 30, 1985 fiscal year end balance sheet.

Robert E. Leidigh, Esq.
California Fair Political
Practices Commission

January 12, 1987
Page Two

You have also requested information with regard to potential effects on Scripps of any pending decisions by Tri-City Hospital District. At the present, there is a pending decision with regard to an alternative compensation system for employees at Tri-City Hospital District. Any type of compensation system proposed by Tri-City could result in changes in the competitive benefits provided in the work place which could adversely or beneficially impact the Scripps Memorial Hospitals. An example of an additional issue which may be pending is an increase in service charges which could also benefit or adversely impact the Scripps Memorial Hospitals.

I hope the foregoing information is beneficial. We will be happy to assist you in the event additional information is needed.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lucas J. Bonagura", with a stylized flourish at the end.

Lucas J. Bonagura, M. D.
President
Tri-City Hospital District
Board of Directors

RAH:vp

c: Members of the Board
Richard A. Hachten II
Alan I. Epstein, Esq.



Tri-City Medical Center

4002 Vista Way, Oceanside, California 92056, (619) 724-8411

December 12, 1986

EXP
DEC 15 9 40 AM '86
Richard A. Hachten II
Chief Executive Officer

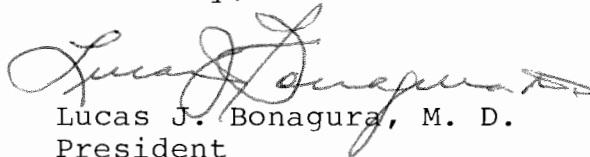
Robert E. Leidigh
Counsel, Legal Division
California Fair Political
Practices Commission
Post Office Box 807
Sacramento, California 95804-0807

Re: Your File Number I-86-275

Dear Mr. Leidigh:

We have reviewed your letter and note that we have left out one important fact: Scripps Memorial Hospital is a non-profit corporation qualified as a section 501(c)(3) entity pursuant to the Internal Revenue Code. Could you please advise the Board of Directors as to the appropriate analysis that must be done under section 87103(c) of the Government Code. If Regulation 18702(b)(3) applies, could you also please advise us as to the analysis that must be done under that regulation for a source of income not from a business entity and refer us to any past advice letters that may be of reference to Director Merlock.

Sincerely,



Lucas J. Bonagura, M. D.
President
Tri-City Hospital District
Board of Directors

LJB:bp



California Fair Political Practices Commission

December 23, 1986

Lucas J. Bonagura, M.D., President
Tri-City Hospital District
Board of Directors
4002 Vista Way
Oceanside, CA 92056-4593

Re: Your Request for Advice
Regarding Director Margaret
Merlock
Our File No. 86-275

Dear Dr. Bonagura:

We have received your request for follow-up advice to our previous letter to you regarding four of the directors of Tri-City Hospital District. Your follow-up letter indicated that your previous request failed to include a material fact regarding Scripps Memorial Hospital, the employer of Director Margret Merlock. You now advise that Scripps is not a business entity but is, instead, a 501(c)(3), nonprofit, tax-exempt corporation. You have recognized that, as such, the standards for materiality referred to in our previous letter are not applicable. You have asked for further advice regarding the applicable standards for a source of income which is not a business entity. (2 Cal. Adm. Code Section 18702(b)(3)(D).)

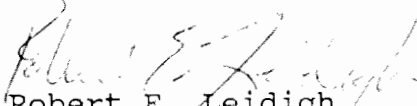
In order to provide you with the assistance you now request, we need the following factual information regarding Scripps Memorial Hospital.

1. Annual revenues; and
2. Value of assets (land, structures, equipment, etc.).

In addition, it would be extremely helpful to have some idea of the potential effects on Scripps of any pending decisions by Tri-City.

As always, your prompt response will aide us in expediting our reply.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: Margaret Merlock



California Fair Political Practices Commission

December 19, 1986

Lucas J. Bonagura, M.D.
Tri-City Medical Center
4002 Vista Way
Oceanside, Ca 92056

Re: 86-275

Dear Dr. Bonagura:

Your letter requesting advice under the Political Reform Act was received on December 15, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh